

Application Serial No. 10/802,555
Amendment dated May 10, 2006
Reply to Office Action mailed February 13, 2006

IN THE DRAWINGS

Figure 6 has been added to more clearly show each and every feature of the claimed invention. Applicants submit an informal drawing of Figure 6 for Examiner approval. Figure 6 follows the Remarks.

REMARKS

Applicants kindly thank the Examiner for the discussion of the issues on May 10, 2006.

Claims 1-18 are currently pending in the present application. Claim 19 has been cancelled. Claims 1, 3, 5, 9, 13, 15, and 18 have been amended.

Claims 1 and 5 have been amended to recite that the upper magnet has a constant magnetic force. Claim 3 has been amended to recite that the lower magnet has a constant magnetic force. Claim 18 has been amended to recite that the upper magnet has a constant magnetic force and to recite that the upper magnet is configured to constantly attract the lower magnet. Support for the amendments to claims 1, 3, 5 and 18 may be found throughout the specification, for example, in paragraphs 0010, 0011, 0013, 0019, 0020, and 0031.

Claim 9 has been amended to clarify that a passageway extends through the first elongate member. Claims 13 and 15 have been amended to correct antecedent basis.

Figure 6 has been added to illustrate that the upper magnet comprises a bullet shaped recess and the lower magnet is bullet shaped. Support for the new figure may be found throughout the specification and in the figures, for example in paragraph 13 and Figure 3. The specification has been amended to include Figure 6. No new matter has been added in this Amendment.

I. Claim Objections

Claim 8 has been objected to because the Examiner asserts that the claimed subject matter is not supported in the drawings. Applicants have submitted an additional Figure illustrating the upper magnet including a bullet-shaped recess and the lower magnet that is bullet shaped. Support for the additional drawing is discussed below.

Claims 13 and 15 have been objected to because these claims lack antecedent basis. Claim 13 has been amended to remove the term "second" in reference to the passageway. Claim 15 has been amended to remove the term "third" in reference to the passageway. Amended claims 13 and 15 provide antecedent basis for the term "passageway".

Therefore, Applicants respectfully request that the objections to claims 8, 13 and 15 be withdrawn.

II. Drawings

The drawings have been objected to under 37 C.F.R. §1.83(a) for failing to show every feature specified by the claims. Claim 8 requires an upper magnet including a bullet-shaped recess and a lower magnet that is bullet shaped which is now illustrated in Figure 6. The upper magnet including a bullet-shaped recess and the lower magnet that is bullet-shaped are described in the specification at paragraph 13. Figure 3 illustrates both the bullet-shaped recess in one magnet and the other magnet that is bullet-shaped. Figure 6 simply reverses the shapes of the upper and lower magnets shown in Figure 3. No new matter has been added.

Applicants respectfully request that the objection to the drawings under 37 C.F.R. §1.83(a) be withdrawn.

III. Claim Rejections

A. Claim Rejections under 35 U.S.C. § 102(b)

Claims 1, 3-6 and 19 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Hendren, III (U.S. 3,986,493). According to the Examiner, Hendren, III discloses an electromagnetic bougienage method for lengthening atretic segments.

Applicants respectfully traverse the Examiner's rejection based on Hendren, III. Applicants respectfully request reconsideration of the rejected claims in light of the claim amendments and the traversals discussed below.

Hendren, III discloses a method for lengthening atretic segments of a patient by electromagnetic bougienage to facilitate subsequent primary anastomosis without tension. (Abstract.) The two bougie assemblies are inserted in the atretic segments and then the patient is aligned within the circular opening of an electromagnet so that the two bougies are aligned with the axis of the electromagnet. (See Col. 1, lines 31-37.) The electromagnet is cycled so that it is energized for approximately 60 seconds and is de-energized for approximately 90 seconds. (Col. 1, lines 40-43.) According to the teaching of Hendren, III, "the word 'magnetic' means capable of being magnetized." (Col. 2, lines 42-43.) "The electromagnet pulls the two bougies towards each other (see arrows in FIG. 1) which causes the two esophageal segments to elongate. Constant magnetic force would erode the esophageal ends because of pressure necrosis. Therefore, *intermittent magnetic force is mandatory.*" (Col 3, line 67-Col. 4,

line 4, emphasis added.) Hendren, III clearly teaches away from a magnet that has a constant magnetic force or a method using a constant magnetic force.

Hendren, III also discloses that when the electromagnet is de-energized, there is no mutual attraction between the bougies. (Col. 4, lines 12-14.) Further, in alternate methods disclosed, Hendren, III teaches bougies 26 and 42 which are themselves electromagnets or one of the bougies could be an electromagnet. However, "it is recognized that this alternate method and apparatus involves inserting electrical wires into the infant's body." It is clear that Hendren, III teaches the use of **electromagnetic** bougies that require external energy to activate attractive forces to attract the bougies toward each other.

In contrast, Applicants' newly amended claims 1 and 5 require that the upper magnet has a constant magnetic force. Newly amended claim 3 requires that the lower magnet has a constant magnetic force. Claims 4 and 6 depend from newly amended claims 3 and 5, respectively. Applicants' claimed invention, claiming a magnet having a constant magnetic force or constant magnetic force causing attraction between the magnetic tips of the esophageal catheter and the gastric catheter is clearly not taught by Hendren, III. Hendren, III actually teaches away from constant magnet force, instead teaching that *intermittent magnetic force is mandatory*.

Claim 19 has been cancelled thereby mooted the Examiner's rejection of this claim.

Thus, Applicants respectfully assert that the claimed invention is not anticipated by Hendren, III. Applicants respectfully request the rejection of claims 1 and 3-6 under 35 U.S.C. §102(b) be withdrawn.

B. Rejections under 35 USC §103

1. Claim 2

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Hendren, III.

As discussed above, Applicants amended claim 1. Claim 2 depends from newly amended claim 1. For the same reasons discussed above with respect to claim 1, claim 2 dependent thereon is also allowable.

Applicants respectfully request that the rejection of claim 2 under 35 U.S.C. § 103(a) be withdrawn.

2. Claims 7 and 8

Claims 7 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hendren, III in view of Rudie (U.S. 3, 771,526). According to the Examiner, Rudie teaches an anastomosis clamp wherein the two engaging means are shaped in multiple ways to engage themselves.

Applicants respectfully traverse the Examiner's rejection based on Hendren, III in view of Rudie since the references alone or in combination fail to teach or suggest a medical device including a magnet having a constant magnetic force. Furthermore, Applicants respectfully assert that there is no suggestion in either reference to combine the electromagnet of Hendren,III with the anastomosis clamp of Rudie as required by § 103.

Rudie teaches an anastomosis clamp including a first clamping collar, a second clamping collar, a support rod connected to the first collar and means for urging the clamping collars together. The second collar includes a support member slidable on the support rod. The opposed edges of the collar include undulations that mate. (Abstract.) Rudie clearly does not teach or suggest a magnet having a constant magnetic force.

As discussed above, Hendren III is directed to an electromagnet where intermittent magnetic force is mandatory. Hendren, III fails to teach or suggest a magnet having a constant magnetic force.

In contrast, as discussed above, Applicants' claimed invention in claims 7 and 8 require an upper magnet having a constant magnetic force. Hendren, III fails to teach or suggest an upper magnet having a constant magnetic force and Rudie cannot make up the deficiencies of Hendren, III.

Therefore, Applicants respectfully request that the rejection of claims 7 and 8 under 35 U.S.C. §103(a) be withdrawn.

3. Claims 9-16

Claims 9-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hendren, III in view of Mager (U.S. 2003/0130610). According to the Examiner, Mager teaches a balloon catheter and a guide wire and guide wire channel [137].

Applicants respectfully traverse the Examiner's rejection of claims 9-16 based on Hendren, III in view of Mager since the references alone or in combination fail to teach

or suggest a medical device including a magnet having a constant magnetic force. Furthermore, Applicants respectfully assert that there is no suggestion in either reference to combine the electromagnet of Hendren, III with the aortic balloon catheter of Mager as required by § 103.

Mager discloses a multi-lumen aortic balloon catheter for blocking the ascending aorta and delivering blood in a heart-surgery patient. (Paragraph [0002].) Mager fails to teach or suggest a magnet having a constant magnetic force.

As discussed above, Hendren, III is directed to an electromagnet where intermittent magnetic force is mandatory. Hendren, III fails to teach or suggest a magnet having a constant magnetic force.

In contrast, as discussed above, Applicants' claimed invention in claims 9-16, depending from newly amended claim 5, require an upper magnet having a constant magnetic force. Hendren, III fails to teach or suggest an upper magnet having a constant magnetic force and Mager cannot make up the deficiencies of Hendren, III.

Therefore, Applicants respectfully request that the rejection of claims 9-16 under 35 U.S.C. §103(a) be withdrawn.

4. Claim 17

Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Hendren, III in view of Auzin (U.S. 2,308,484). According to the Examiner, Auzin teaches the use of a band placed on the balloon to additionally secure the balloon end and reinforce the assembly elements.

Applicants respectfully traverse the Examiner's rejection of claim 17 based on Hendren, III in view of Auzin since the references alone or in combination fail to teach or suggest a medical device including a magnet having a constant magnetic force. Furthermore, Applicants respectfully assert that there is no suggestion in either reference to combine the electromagnet of Hendren, III with the catheter of Auzin as required by § 103.

Auzin discloses a method of manufacturing inflatable catheters and catheters having stronger inflatable balloon sections and reinforced ends. (Col. 1, lines 1-15.) Auzin fails to teach or suggest a magnet having a constant magnetic force.

As discussed above, Hendren III is directed to an electromagnet where intermittent magnetic force is mandatory. Hendren, III fails to teach or suggest a magnet having a constant magnetic force.

In contrast, as discussed above, Applicants' claimed invention in claim 17, depending from newly amended claim 5, requires an upper magnet having a constant magnetic force. Hendren, III fails to teach or suggest an upper magnet having a constant magnetic force and Auzin cannot make up the deficiencies of Hendren, III.

Therefore, Applicants respectfully request that the rejection of claim 17 under 35 U.S.C. §103(a) be withdrawn.

5. Claim 18

Claim 18 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Hendren, III in view of Mager and in further view of Burkett (U.S. 2003/0139703). According to the Examiner, Burkett teaches a gastric catheter with a balloon (44) and a hub in fluid communication (Figure 9).

Applicants respectfully traverse the Examiner's rejection of claim 18 based on Hendren, III in view of Mager and in further view of Burkett since the references alone or in combination fail to teach or suggest a medical device including an upper magnet having a constant magnetic force wherein the upper magnet is configured to constantly attract the lower magnet. Furthermore, Applicants respectfully assert that there is no suggestion in any of the references to combine the electromagnet of Hendren, III with the aortic balloon catheter of Mager and with the feeding tube of Burkett as required by § 103.

Burkett discloses a feeding tube medical apparatus having a catheter head and catheter that allows easy insertion and removal of the catheter within a patient needing enteral feeding. The catheter is designed to promote easy insertion of the catheter down a patient's mouth and into his or her stomach. (Abstract.) Burkett fails to teach or suggest an upper magnet having a constant magnetic force.

As discussed above, Hendren III is directed to an electromagnet where intermittent magnetic force is mandatory and Mager is directed to a multi-lumen aortic balloon catheter. Hendren, III and Mager fail to teach or suggest an upper magnet having a constant magnetic force.

In contrast, as discussed above, Applicants' claimed invention in newly amended claim 18 requires an upper magnet having a constant magnetic force wherein the upper magnet is configured to constantly attract the lower magnet.

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Hendren, III fails to teach or suggest an upper magnet having a constant magnetic force and Mager and Burkett individually and in combination cannot make up the deficiencies of Hendren, III.

Therefore, Applicants respectfully request that the rejection of claim 18 under 35 U.S.C. §103(a) be withdrawn.

SUMMARY

Having carefully addressed all the objections and rejections of the Examiner in the February 13, 2006 Office Action, it is respectfully asserted that the claims properly define the invention and that the invention is both novel and non-obvious. Allowance of the present claims is earnestly solicited.

Applicants respectfully request that the Examiner call the undersigned with any questions regarding this response to expedite the prosecution of the application.

Respectfully submitted,

A handwritten signature in cursive script, reading "Heidi A. Dare", is written over a horizontal line.

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